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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,404	09/11/2001	Georg Rudolf Theobald Bechmann	CM2069	3837

27752 7590 07/07/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER	
ALEJANDRO, RAYMOND	
ART UNIT	**PAPER NUMBER**
1745	

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/936,404	BECHMANN ET AL.	
	Examiner	Art Unit	
	Raymond Alejandro	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) *13-17* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 May 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This office action is responsive to the amendment filed 05/24/04. The applicants have overcome the objection and the 35 USC 102 rejections. Refer to the abovementioned amendment for specific details on applicant's rebuttal arguments. However, the present claims are finally rejected over art as seen below and for the reasons of record:

Election/Restrictions

1. This application contains claims 13-17 drawn to an invention nonelected with traverse in the reply filed on 02/27/04. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Drawings

2. The drawings were received on 05/24/04. These drawings are acceptable.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

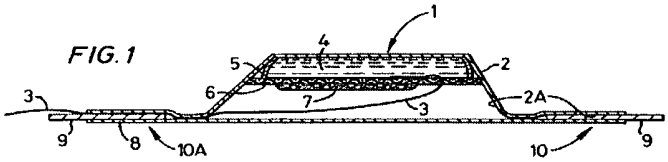
claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

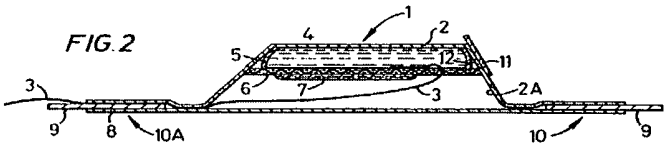
5. Claims 1-3, 5-6, 8-9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the International Publication WO 97/04831 in view of Radel et al 4342314.

The present claims are directed to a cell system wherein the disclosed inventive concept comprises the specific opening means.

With respect to claims 1, 6 and 8-9:

The WO'831 publication teaches in Figures 1-2, a bandage 1 provided with a gas impermeably flexible material 2 which is a plastic material such as polyethylene or polyalkylene sheet (page 5, lines 30-35). The sheet material is formed over the entirety of the lower surface with first adhesive layer 2A whereas the upper layer is non-adhesives (page 6, lines 1-6). It is disclosed that centrally disposed on the underside of the sheet material is a chemical material such as hydrogen peroxide (4) (*the active composition*) (page 6, lines 9-15). Integral with the reservoir material 5 there is a release means 3, preferably a strong string, being its first end detachably attached to the reservoir material along a line of weakness such that when the string is pulled, the reservoir material tears to release the material 4 (*the burstable cell*) (page 6, lines 30-36/page 9, lines 26-37).





With respect to claims 2-3 and 5:

The WO'831 publication discloses the use of plastics such as polyalkylene, polyethylene sheet for retaining the bandage contain (pages 5, lines 30-36) as well as the use of Al foil (page 7, lines 1-9). *Hence, it is thus asserted that the specific water vapor transmission rate (WVTR) and required force are inherent characteristics and/or properties of the material, in particular, polyethylene. Accordingly, products of identical chemical composition can not have mutually exclusive properties, and thus, the claimed property the specific water vapor transmission rate (WVTR) and required force, is necessarily present in the prior art material. Furthermore, since the recited cell system covers a very large number of applicable materials which can be used therefor, it is also contended that materials comprising any combination of plastic materials, resins or thermosets or thermoplastic polymers would produce a cell system exhibiting the specific water vapor transmission rate (WVTR) and required force.*

With respect to claim 6:

It is disclosed that the bandage structure may comprises a resealable vent on the upper surface of the sheet material 2 so as to achieve an air tight seal (page 8, lines 26-35). It is also disclosed that the release layer forms a weak bond with the adhesive layer (page 7, lines 10-20). *Thus, it is contended that the bandage structure has a weak seal.*

With respect to claim 11-12:

It is further disclosed that the enclosed device has the following enclosed volume dimensions: 5 cm by 2cm by 1 cm (COL 10, lines 1-10). It is also evident from **Figures 1-2** above that the internal volume of bandage structure is partly filled, for instance, reservoir 5 enclosing the hydrogen peroxide occupies, at least, half of the bandage structure maximum fillable volume.

The WO'831 publication teaches cell bandage system according to the foregoing. However, the WO'831 does not expressly disclose the specific flow control means.

Radel et al disclose a resilient plastic web exhibiting a fiber-like appearance, wherein the web has a three-dimensional microstructure comprising a regulated continuum of debossed areas comprising capillary networks interconnecting first and second surfaces of the web wherein said web promotes fluid transport from the first surface of the web to the second surface and inhibit the flow of fluid in the reverse direction (ABSTRACT). *Thus, the web acts as the control flow means.*

In view of the above, it would have been obvious to one skilled in the art at the time the invention was made to use the specific flow control means of Radel et al in the cell bandage system of the WO'831 publication as Radel et al disclose that web promotes fluid transport from the first surface of the web to the second surface and inhibit the flow of fluid in the reverse direction. Thus, the web structure itself provides the required fluid transport (flow) control means.

6. Claims 1-3, 5-7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the International Publication WO 96/28262 in view of Thompson 3929135.

With respect to claims 1 and 6:

TheWO'262 publication disclose a cleaning kit 101 wherein a stack of wipers 14 is packaged together with a container 100 of cleaning fluid (*the active composition*) in a liquid tight outer container 18 (ABSTRACT). Fluid is released from the inner container 100 into the wipers. In one embodiment, fluid is released from the inner container 100 by means of a puncturing device 102 operable to puncture one of walls of the inner container 100 by application of pressure in a limited area on the outside of the outer container 18 (ABSTRACT). It is disclosed that the container can be resealed to protect its content after the package has been opened (ABSTRACT).

It is disclosed that the container is formed by a first sheet 18 forming a bottom panel on one side, and a second sheet 20 forming a top panel on the opposite side (page 9, lines 23-28). The sheets 18 and 20 are made of plastic and are adhered together along a seam 26 to form an air tight and liquid tight container (page 9, line 28 to page 10, line 3/ page 15, lines 19-24). Thus, the two sheets are sealed together along its edges (page 10, lines 25-29).

It is further disclosed that each bag is burst relatively easily by the application of pressure (page 12, lines 5-13, 15-18 and 20-25) and each has a weakened area (page 11, line 4-10/ page 15, lines 9-15).

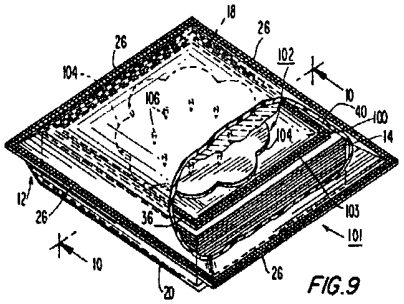


FIG.9

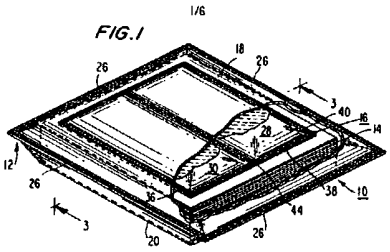


FIG.1

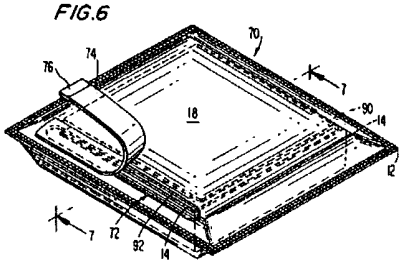


FIG.6

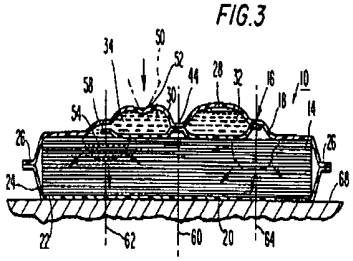


FIG.3

As to claims 2-3 and 5:

The WO'262 publication discloses the use of plastics as sealing sheet (page 9, line 28 to page 10, line 3/ page 15, lines 19-24). *Hence, it is thus asserted that the specific water vapor transmission rate (WVTR) and required force are inherent characteristics and/or properties of the material, in particular, polyethylene. Accordingly, products of identical chemical*

composition can not have mutually exclusive properties, and thus, the claimed property the specific water vapor transmission rate (WVTR) and required force, is necessarily present in the prior art material. Furthermore, since the recited cell system covers a very large number of applicable materials which can be used therefor, it is also contended that materials comprising any combination of plastic materials, resins or thermosets or thermoplastic polymers would produce a cell system exhibiting the specific water vapor transmission rate (WVTR) and required force.

As for claim 7:

Figures 3 (above) and 10 show a container having a channel shape comprising two sections.

Regarding claim 12:

It is also apparent from **Figures 1, 3, 6 and 9** above that the internal volume of container is partly filled, for instance, container 18 has wipers 14 occupying, at least, more than half of the maximum fillable volume.

The WO'262 publication teaches cell bandage system according to the foregoing. However, the WO'262 does not expressly disclose the specific flow control means.

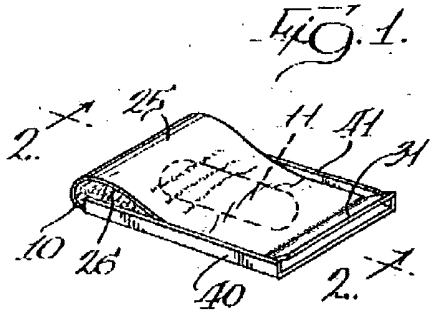
Thompson discloses absorptive devices having an absorptive structure comprising a fluid impervious topsheet material provided with tapered capillaries or orifices of critical openings dimensions and of critical angles (COL 2, lines 15-25). The topsheet allows the free transfer of fluids from the body into the absorbent element of the device while inhibiting the reverse flow of these fluids thereby providing a relatively much dryer surface in contact with the user than has

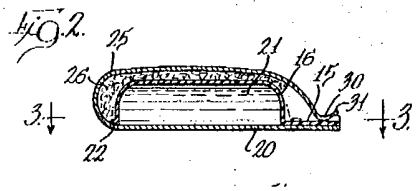
been previously obtainable (COL 2, lines 27-42). *Thus, the absorptive structure acts as the control flow means.*

In view of the above, it would have been obvious to one skilled in the art at the time the invention was made to use the specific flow control means of Thompson in the cleaning kit of the WO'262 publication as Thompson discloses that the topsheet allows the free transfer of fluids from the body into the absorbent element of the device while inhibiting the reverse flow of these fluids thereby providing a relatively much dryer surface in contact with the user than has been previously obtainable. Thus, an effective fluid control is achieved. *It is also noted that Thompson is relevant and pertinent to the WO'262 publication as they both address and solve the same problem of providing suitable regulated enclosures for holding fluid materials.*

7. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey 3826259 in view of Radel et al 4342314.

Bailey discloses a self-contained medication applicator with an encapsulated medicine or other fluid (*the active composition*) wherein a rigid section of material is provided with a recess to hold the fluid and a flexible strip has one part thereof sealed to the rigid material to close off the recess and encapsulate the liquid, with an adjacent length of flexible material secured thereto and with a further length of the flexible material peelably attached to the rigid material (ABSTRACT/COL 2, lines 49-63). It is disclosed that the discharge of the fluid is facilitated by having a fractureable seal at one end of the recess (ASBTRACT/ COL 2, lines 49-63).





Bailey teaches cell bandage system according to the foregoing. However, Bailey does not expressly disclose the specific flow control means.

Radel et al disclose a resilient plastic web exhibiting a fiber-like appearance, wherein the web has a three-dimensional microstructure comprising a regulated continuum of debossed areas comprising capillary networks interconnecting first and second surfaces of the web wherein said web promotes fluid transport from the first surface of the web to the second surface and inhibit the flow of fluid in the reverse direction (ABSTRACT). *Thus, the web acts as the control flow means.*

In view of the above, it would have been obvious to one skilled in the art at the time the invention was made to use the specific flow control means of Radel et al in the self-contained medication applicator system of Bailey because Radel et al disclose that web promotes fluid transport from the first surface of the web to the second surface and inhibit the flow of fluid in the reverse direction. Thus, the web structure itself provides the required fluid transport (flow) control means.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the International Publication WO 97/04831 in view of Radel et al 4342314 as applied to claim 3 above, and further in view of the European patent 540184.

The WO'831 publication and Radel et al are applied, argued and incorporated herein for the reasons above. Nevertheless, the preceding prior art does not expressly disclose the specific laser scoring portion.

In this regard, the EP'184 patent discloses a structure for use in making an easy open package comprising a thermoplastic sheet material having a strip of metal on one surface thereof a score line which may be formed by a laser (ABSTRACT).

In view of the above, it would have been obvious to one skilled in the art at the time the invention was made to make the specific laser scoring portion of the EP'184 patent in the bandage enclosing structure of the WO'831 publication and Radel et al as the EP'184 patent teaches that such laser scoring line provides barrier properties in the area of the score line. Thus, the laser scoring line assist in the process of sealing the package. *In this regard, it is noted that the EP'184 patent teaches an improved laser scored package. Thus, the teachings of the EP'184 patent do clearly encompass the use of a laser scoring feature regardless of intended use of packages, containers and/or bandages. Hence, the EP'184 patent directly teaches the use of laser scoring feature to provide barrier properties. In this manner, the examiner impartially upholds and remarks that the cited reference is in the field of applicant's endeavor or, at least, it is reasonably pertinent to the particular problem with which the inventor is concerned.*

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the International Publication WO 96/28262 in view of Thompson 3929135 as applied to claim 3 above, and further in view of the European patent 540184.

The WO'262 publication and Thompson are applied, argued and incorporated herein for the reasons above. Nevertheless, the preceding prior art does not expressly disclose the specific laser scoring portion.

In this regard, the EP'184 patent discloses a structure for use in making an easy open package comprising a thermoplastic sheet material having a strip of metal on one surface thereof a score line which may be formed by a laser (ABSTRACT).

In view of the above, it would have been obvious to one skilled in the art at the time the invention was made to make the specific laser scoring portion of the EP'184 patent in the container structure of the WO'262 publication and Thompson as the EP'184 patent teaches that such laser scoring line provides barrier properties in the area of the score line. Thus, the laser scoring line assist in the process of sealing the package. *In this regard, it is noted that the EP'184 patent teaches an improved laser scored package. Thus, the teachings of the EP'184 patent do clearly encompass the use of a laser scoring feature regardless of intended use of packages, containers and/or bandages. Hence, the EP'184 patent directly teaches the use of laser scoring feature to provide barrier properties. In this manner, the examiner impartially upholds and remarks that the cited reference is in the field of applicant's endeavor or, at least, it is reasonably pertinent to the particular problem with which the inventor is concerned.*

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the International Publication WO 97/04831 in view of Radel et al 4342314 as applied to claim 3 above, and further in view of the European patent 681546.

The WO'831 publication and Radel et al are applied, argued and incorporated herein for the reasons above. Nevertheless, the preceding prior art does not expressly disclose the specific polyolefin metallic layer laminate.

In this regard, the EP'546 patent discloses a flexible plastic container made of a thin film plastic material such that an inner container can be readily burst when pressure is applied thereto (CLAIM 3) and comprising an outer container 10 made of a suitable plastic material such as an Al laminate on the outer surface of a polyester film base having a polyethylene layer on the inner surface thereof (COL 3, lines 1-20).

In view of the above, it would have been obvious to one skilled in the art at the time the invention was made to use the specific polyolefin metallic layer laminate of the EP'546 patent in the bandage enclosing structure of the WO'831 publication and Radel et al as the EP'546 patent teaches, in particular, that a polyethylene layer aluminum laminate forms a hermetic seal around the periphery they are applied to. Thus, the polyethylene layer aluminum laminate acts as a sealing feature and at the same time assists to prevent undesired movements of the pouch container. *In this case, the disclosures of both references are found to be within the same field of endeavor and, thus, relevant to each other because the sealing feature disclosed in both references is fairly comparable, namely, both reference are directed to sealable containers, bandages (enclosures) and/or pouches.*

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the International Publication WO 96/28262 in view of Thompson 3929135 as applied to claim 3 above, and further in view of the European patent 681546.

The WO'262 publication and Thompson are applied, argued and incorporated herein for the reasons above. Nevertheless, the preceding prior art does not expressly disclose the specific polyolefin metallic layer laminate.

In this regard, the EP'546 patent discloses a flexible plastic container made of a thin film plastic material such that an inner container can be readily burst when pressure is applied thereto (CLAIM 3) and comprising an outer container 10 made of a suitable plastic material such as an Al laminate on the outer surface of a polyester film base having a polyethylene layer on the inner surface thereof (COL 3, lines 1-20).

In view of the above, it would have been obvious to one skilled in the art at the time the invention was made to use the specific polyolefin metallic layer laminate of the EP'546 patent in the bandage enclosing structure of the WO'262 publication and Thompson because the EP'546 patent teaches, in particular, that a polyethylene layer aluminum laminate forms a hermetic seal around the periphery they are applied to. Thus, the polyethylene layer aluminum laminate acts as a sealing feature and at the same time assists to prevent undesired movements of the pouch container. *In this case, the disclosures of both references are found to be within the same field of endeavor and, thus, relevant to each other because the sealing feature disclosed in both references is fairly comparable, namely, both reference are directed to sealable containers, bandages (enclosure) and/or pouches.*

Response to Arguments

12. Applicant's arguments, see the amendments filed 05/24/04 for specific details, with respect to the rejections of claims 1-12under the 35 USC 102 statute have been fully considered and are persuasive. Therefore, the rejection has been overcome. However, upon further consideration, a new ground(s) of rejection is made as seen above. Accordingly, applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Alejandro whose telephone number is (571) 272-1282. The examiner can normally be reached on Monday-Thursday (8:00 am - 6:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Raymond Alejandro
Examiner
Art Unit 1745